

STATEMENT OF SHARON BUCCINO
SENIOR ATTORNEY
NATURAL RESOURCES DEFENSE COUNCIL
WASHINGTON, DC

Good morning. My name is Sharon Buccino. I am an attorney with the Natural Resources Defense Council (NRDC). NRDC is a non-profit, membership organization dedicated to the protection of the Earth – its people, its plants, its animals and the natural systems on all life depends. NRDC has over 500,000 members across the country and offices in Washington, DC, New York City, San Francisco and Los Angeles. Through the Clean Water Network, NRDC works with citizens across the country to maintain and restore water quality. Citizens across the country depend on clean water for their jobs, health and quality of life.

1. Oil and Gas Construction Harms Water Quality.

Oil and gas exploration and production is exploding across the West. Since 2001, the Department of the Interior has taken numerous actions to accelerate energy development. In May 2001, President Bush issued Executive Order 13212 specifying agency actions to expedite energy projects, including the formation of the White House Energy Project Streamlining Task Force. While older fields, such as those in Texas and Oklahoma, may be declining, new areas such as those in the Rocky Mountain region are being developed at record pace. The amount of land leased by the Bureau of Land Management (BLM) for oil and gas development is up by 16 percent. BLM set a new record for the number of drilling permits approved in FY2004. The BLM approved 6,130 permits in FY04, up from 3,802 permits in the previous fiscal year. New drilling pads are being built every day. Miles of new roads and pipelines are being constructed.

EPA estimates that approximately 30,000 new oil and gas construction starts occur each year. While this affects the costs of the permit actions, failure to regulate also has significant costs. With 30,000 new construction starts each year, significant damage is occurring with each year of delay in regulation oil and gas construction. It is not just the West that is affected. New oil and gas pipelines are being constructed across the country.

This construction activity has real and immediate impact on the nation's waters. When it issued its Phase II stormwater regulations in December 1999, EPA documented the contribution of construction activities to stormwater pollution in this country. EPA's own fact sheet stated,

Stormwater runoff from construction activities can have a significant impact on water quality. As stormwater flows over a construction site, it picks up pollutants like sediment, debris, and chemicals. Polluted stormwater runoff can harm or kill fish and other wildlife. Sedimentation can destroy aquatic habitat and high volumes of runoff can cause stream bank erosion.

U.S. EPA, "Stormwater Discharges from Construction Activity: Overview," available at http://cfpub1.epa.gov/npdes/stormwater/const.cfm?program_id=6. EPA reported in 1998 that "siltation is the largest cause of impaired water quality in rivers." National Pollutant Discharge Elimination System—Regulations for Revision of the Water Pollution Control Program Addressing Storm Water Discharges, 64 Fed. Reg. 68722, 68724 (Dec. 8, 1999). Tremendous amounts of sediment are released into nearby streams and rivers during construction when natural groundcover or agricultural crop vegetation is removed. According to EPA, "erosion rates from construction sites are much greater than from almost any other land use." 64 Fed. Reg. at 68729.

Arid conditions across much of the West make matters worse. Construction of well pads and roads scour the landscape leading to significant erosion and sedimentation in Western streams. In Colorado alone, 82 (or 74 %) of the 111 waters that violate the state's water quality standards are listed as impaired for sediment. Sixty-seven are listed as impaired for sediment alone. Oil and gas companies have failed to demonstrate that their construction is any less harmful than other types of construction. Until they do, EPA should regulate stormwater pollution from oil and gas construction just as it does other types of construction.

2. Permits Ensure that Oil and Gas Companies Use Best Management Practices to Control Stormwater Pollution.

While there may be some good actors, not all oil and gas companies are voluntarily taking the steps necessary to protect water quality. For example, one company left the Brannaman Ranch in Sheridan, Wyoming, with a 600-acre draw ripped up by earth-moving machines, drill pads carved out of the surrounding hillsides, and lengths of rusting pipe on a staging pad cut out of the pasture. Clifford, Hal, "Wyoming's Powder Keg," *High Country News* (November 5, 2001). The Brannamans own the surface, but they do not own the rights to the minerals underneath. *Id.* Citizens in Gunnison County have documented with photographs the damage caused by the failure of oil and gas companies to take steps to control stormwater pollution. Others across the West have witnessed similar corporate irresponsibility.

Permits provide a mechanism to ensure that oil and gas companies put best management practices in place. These practices include minimizing the amount of exposed soil, silt fencing, and use of vegetative buffers. Industry has not generally complained about the cost of these measures or the need for them. Instead, oil and gas

companies have complained about the cost of the permitting process. Yet, the administrative burden is relatively small. Construction activities are for the most part regulated through a general permit, requiring simple notice of intent to be covered rather than an extensive individual permit. U.S. EPA, “Stormwater Discharges from Construction Activity: Overview,” available at http://cfpub1.epa.gov/npdes/stormwater/const.cfm?program_id=6. An alternative system may be possible that provides greater speed and certainty to industry, yet any substitute must provide an enforcement mechanism. There must be some means of accountability to ensure that companies do in fact install and maintain BMPs and that they are effective in preventing stormwater pollution.

3. Stormwater Permits Provide a Mechanism to Ensure that Energy Development is Done Right and Help Diffuse Controversy.

Communities in the West are willing to help contribute to meeting our nation’s energy needs. NRDC, along with most citizens in the Rocky Mountain region, do not oppose energy development on the public lands. It is critical, however, that where it is done, it is done in a way that addresses its adverse impacts on the economies and health of the local communities. Much of the drilling that is occurring in the Rocky Mountain region is in areas where BLM has leased the subsurface mineral rights, but individual ranchers and farmers own the surface. If the stormwater control requirements are removed, oil and gas companies can build their well pads, roads, and pipelines and simply leave the damage behind.

We do not need to relax environmental protections to increase oil and gas production. According to a January 2003 report by the Bush Administration, 88 percent of “technically recoverable” federal gas resources in the five major Western basins are

open to exploration and development. Numerous leases and drilling permits are going unused. Nearly 73 percent of the total acreage under BLM gas and oil leases is not in production. In FY 2004, BLM data show that only 2,489 new wells were drilled in the Rockies, leaving 3,335 approved permits in the region unused. Oil and gas companies can reduce their costs by reducing controversy. This involves addressing the public's concerns, rather than ignoring them.